1951

File No. O Cr. P.C/51

Legal **DEPARTMENT** Pt II

"A" **BRANCH**

Subject:—

Opinions under the Code of Criminal Procedure; 1898.

(For previous papers please see Pt I)

R.58.E

File No. O Cr. P. C/51 Pt II

Std. Sectt. Slip 24 E. 6.

5-A

C O N T E N T S

Leading Department File No O.Cr. P.C./51PtII

Sr. No.	Compilation No	Subject	Pages.
		Opinions under the Code of Criminal Procedure 1998,	
1-	R.I.No.18721/10-9-51 O No 14604/14-9-51	Whether sanction or direction by Govt. under section 178m should issue in respect of the committal of the accused to the services court, B'bay for offences under Sec. 609,366 and 376 I.P.C.	1-18
2.	O.No.14579/14-9-51	Sanction under Sec.197 for prosecution for an offence under Sec. 211, I.P.C.	19-20
3-	O.No.16212/13-10-51	Whether the order under Sec.144 by the Sub-Divisional, Ist Class Magistrate, Rojpipla, against certain persons prohibility them p/p from entering a certain area for a period of 2 months is a valid order	21-24
4.	O.No.656/10-10-51	Sanction order for prosecution for an offence of criminal compiracy to obtain and receive pugree.	25-26
5.	O.No.16606/19-10-51	Sec. 233,234 No 235 Sanction under Sec, 197(1) for prosecution for falsification of accounts.	27-34
6.	B.No. 886.Confl 23/10/51	Whether sanction under Sec.197 would be necessary for prosecuting a person who is no lawyer holding office of president of the Municipality	35-36
7.	O.No.16783/22-10-51	Whether sanction under Sec.197 for prosecution must be previous taking of congnizance	37-38
8.	O,No.16785/22.10.51	Article XV of the Government Joint Advisory Council of the Munisters of Saurashtra and the State of B'bay for investigation, discussion and recommendation, on"subject of common concern" Whether the unionGovt should as should not give sanction under Sec. 197A for prosecution of the Ruler of Patdi for an offence committed in the state of B'bay can be said to the subject of common concern.	39-40
9.	O.No.17795/9/11/51	Re:- Revision of sentence passed by the High Court under Sec. 302.I.P.C.	41-42

MJR/5/5/
5 Copies

S.R.C. 29/5

10.	O.No. 17921/12-11-51	Whether view that the event connot ~~question~~ the application of the Addl. D.S.P. in appeal and that it is open to the police to make ~~anda~~ fresh case is correct 43-44
11.	O.No. 17271/1-11-51	Whether the State Govt. can release on parole a novval prisoner sentenced by a court martial under the Naval Discipline Act by excuting powers under Sec. 401 45-46
12.	R.I.No.23556/15-11-51	C.M.M.D. No 5584/49-E date 13-11-51 Re: Prosecution of under section 467/471 I.P.C.
13.	O.No.17637/17-11-51	Sec. 514(2) Re: Forfeiture of bond and attachment of rent . 49-50
14.	O.No.18265/16/11/51	Sec. 401 Sec. 179 of the Army Act, 1950 Govt for release on furlough in respect of person ~~xxxxx~~ convicted by the General Court Martial Whether if furlough is to be refused a reference to Central Govt. is necessary 51-52
15.	R.I.No.22669/2-11-51 O.No. 18441	Execution of Security bond under Sec. 475 for release of accused who was detained under Sec, 471 in the Borstal Mental Hospital Whether the depisit amount can be forfeited for ~~xxxxx~~ breach of the conditions of the bond, 53-56
16.	O.No.7690/15-5-51	Sec. 197(A) Instruction of-- Instruction regarding immunity from Criminal processes which the ruling princes were enjoying before 15th August 1949 57-58
17.	O.No.19375/Conf.2-53 633Conf102-7-51	Sec.197A Sanction for prosecution under ~~xxxxxxxxxxxxxx~~ 59-60
18	O.No.19735/6.12.51	Re: Sanction for prosecution under Cr. P.Code, 1898 . 61-62
19.	O.No. 7334/9-5-51	Re:- Prosecution for an offence of cheating under Sec. 417 of the I.P C. 63-64
20.	O.No.511-Confl 29-5-51	Re: ~~xxxxxxx~~ Methods of having objectionable remarks in a judgement expunged Sec 564 65-68
21	R.I.No 21687/19-10-51 O.No. 19068/28/11/51	Whether sanction of Govt under Sec. 197 for prosecution for offences under Sec. 467,418 and 468, I.P.C. is necessary in view of the Fact that the President of the Municipality is not removable from office save by or with the sanction of Govt 69-72

No.	Compilation No.	Subject	
22.	R.I.No. 779-Confl 1-12-51 O.No. 1042-Confl 14-12-51	Sanction for prosecution under Sec. 197	73-79
23.	R.I.No. 786-Confl 4-12-51 O.No. 1043-Confl 15-12-51	-------- Do -------	77-80
24.	O.No.7797/17-7-51	Re:- Prosecution of persons for the offence of offering illegal gratification to a Police Officer Preparation of charge sheet against	81-84
25.	O.No.10209/27-6-51	Prosecution of a Police Officer for misconduct and neglect of duty Whether the Police officer can be furnished certain documents as requested by him Rule 545 of the B'bay Police Manual	85/86
26	O.No.14289/7.9.51	Re:- Stay orders issued by ~~xxxxx~~ High Court against the D.M.	87-88
27.	R.I.No.19795/24-9-51 O.No. 15365/26-9-51	Re: Moving G of India Ministry of Home Affaris to issued requisite notification under Sec. 504(3) Cr. P.C.	89-92

Mjr/5/5

5 Copies.

Submitted with reference to D.S.'s note d-27-8-51

1. This is a request from the Presidency Magistrate, Vth Court, Dadar, Bombay for according sanction under S. 178 of the C.P.C. for the trial of the offence of rape and the abetment thereof by Sessions Court of Greater Bombay. The facts are as follows:

A minor girl was kidnapped by accused Nos. 1 and 2 along with another girl and they were both taken to Kalyan where the offence of rape was committed by accused No. 1 on the minor girl which was abetted by accused No. 2 The case has been investigated by the Police in Bombay and the accused have been committed to the Sessions Court to stand their trial under S. 366 of the I.P.C. read with s. 109 and requested Govt. to accord sanction under S. 178 of the Cr. P.C. to enable the Court to try that offence.

2. The place of inquiry or trial of offence is regulated by Sections 177 to 184 of the Code of Criminal Procedure, 1898, s. 177 enacts that every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed. S 178 provides that notwithstanding anything contained in s. 177, the State Govt. may direct that any cases or class of cases <u>committed for trial</u> in any district may be tried in any Sessions Division, provided that such a direction is not repugnant to any direction previously issued by the High Court under specified enactment. In the present case the offence of rape was committed at Kalyan within the jurisdiction of the Thana Sessions Court but the same has been inquired into by the Presidency Magistrate, Bombay and committed for trial to the Sessions Court for Greater Bombay in disregard of the provisions of s.177 This irregularity cannot be cured by section under s. 178 Under that section only a case

committed for trial to a proper Court can be transferred to another Court: but the State Govt. has no power to direct that case which is commited to a Court without jurisdiction shall be tried by the same Court. Commitment to a Court having no territorial jurisdiction over the offence is illegal. It is, therefore, obvious that this illegality cannot be cured by an order under s. 178. Section 180, which is referred to by B branch, is also not applicable to the present case. That section provides that when an act is an offence by reason of its relation to any other act which is also an offence, a charge of the first mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done. The act of rape is a separate and distinct offence and it is not an offence by reason of its relation to the other act of kidnapping. It is obvious, therefore, that the provisions of S. 180 will not be applicable to this case. A similar point arose in Emperor vs. Mohanlal Aditram, 30 Bom. L.R. 1253. There the accused was committed to the Bombay High Court under s. 366 and 376 real with S.144 of the I.P.C. and the latter offence was alleged to have been committed at Ahmedabad. The High Court held that it had no jurisdiction to try the second offence as it was committed outside the jurisdiction and discharged the accused on that charge. In a somewhat similar case, however, the Madras High Court allowed the trial to proceed on the ground of expediency and convenience (Ganapatty Chetty vs. Rex 42 Mad. 791). If it is proposed that the Bombay Sessions Court should try the offence of rape, the High Court would have to be approached under s.526 of the Cr. P.C. It is, however, not clear whether the High Court would grant such an appln. if made. The P.P. who would be conducting the trial before the Session Court may be asked to consider the advisability of moving the High Court for an order under s 526 of the Cr. P.C., enable the city Sessions Court to try the accused on

the charge of rape and its abetment along with the other charges and the High Court may be approached if deemed necessary.

Id/-
29/8/

D.S. (a)

The question for consideration is whether a section or direction by the Government under section 178 of the Criminal Procedure Code shall issue in respect of the commital of two accused to the Sessions court at Bombay.

2. The two accused were charged with the offences of kidnapping of two girls Shanta and Champa and of rape on one of those girls namely Shanta. The kidnapping and its abetment took place at Bombay and the rape and its abetment at Kalyan. The charges against the accused were.

Accused No. - (1) Kidnapping of Shanta;
(2) Abeting accused No. 2 in kidnapping of Champa,
(3) rape on Shanta.

Accused No.2 (1) Kidnapping of Champa;
(2) Abeting accused No.1 in kidnapping of Shanta;
(3) Abeting accused No.1 in rape of Shanta.

All the offences were inquired into by the Presidency Magistrate, 5th Court, Dadar and he committed the accused to the Sessions Court, Greater Bombay, at Bombay to stand their trial in respect of the said offences. He has moved Govt. to accord sanction under section 178 of the Cr. Pro. Code for trial of the accused in respect of the offence of rape (3rd charge in each case) at the Sessions Court at Bombay

3. On the facts, section 178 Cr. Pro. Code will not apply to the case relating to the offence of rape

The charges are that the offence of rape and the abetment of that offence were both committed at Kalyan. Therefore the Presidency Magistrate, Bombay, could not inquire into it nor could the Sessions Court, Bombay try it in view of section 177 Criminal Procedure Code. (See Emperor Vs. Mohanlal Aditram, 30 Bom L.R. 1253) The courts having jurisdiction to inquire into and try the case of rape are the courts of the First Class Magistrate, Kalyan and the Court of Sessions at Thana respectively. Section 178, no doubt, permits the Govt. to direct that any case committed for trial in any district may be tried in any Sessions Division, but it has to be read along with section 177 and if so read it means that the committal must initially have been to the proper court. Here the committal was to a wrong court and that committal cannot be confirmed by a direction under section 178

4. There are then three courses open. One is that the Sessions Court in Bombay may discharge the accused in respect of the offence of rape as was done in Emp vs. Mohanlal (S) so that they may be proceeded against in a proper court. Another is that the trial in the Bombay Session Court may be allowed to proceed on the footing that the irregularity will be cured under section 531 of the Criminal Pro. Code. Such an irregularity would be cured if there is no failure of justice by reason of the irregularity. But if the trial ends in conviction the accused may in appeal urge that the trial in a wrong sessions Division has occasioned a failure of justice. Whether that plea will succeed would depend upon the facts of the case. The third is to apply to the High Court under section 526 either to transfer the case of rape to the Thana Sessions Court for trial, or to direct that the trial shall proceed in the Court of Session at Bombay. Either of these orders, as may be fit , can be made by the High Court under section 526 (See Queen Empress vs. Thaku 8 Bom. 312 and Queen Empress vs. Atmaram Govind 2 Bom L.R.394.)

5. The proper course to adopt would be to apply to the High Court under section 526 Cr. Pro. Code . The p/p Bombay may be asked to consider the advisibility of that can use or inform this Dept.

Mjr/5/5/
4 Copies

D.O. No. 14325
Legal Department,
Bombay Castle (Bombay No. 1.)
September 1951

Dear
Shri ~~Pandit~~

Please find enclosed a letter from the Presidency Magistate, Vth Court and a copy of the Committal proceedings. The Magistrate has requested Government to accord sanction under section 178 of Criminal Procedure Code but it is considered that section 178 will have no application to this case. The accompanying note discusses the three possible courses of action The third one viz an application under section 526 of Criminal Procedure Code is considered advisable; but this Department would be grateful for your opinion in the matter. Kindly therefore favour this Department with your opinion at an early date.

Sd/-

To
Shri M.S. Pandit , Bar-at-Law,
Fort Chambers, Dean Lane,
Fort , Bombay

Mjr/5/5/
4 Copies.

Tel.No.23291

No. 18 of 1951
Office of the

Public Prosecutor for Bombay,
Fort Chambers, Dean Lane,
Fort Bombay
Dated the 6th September 1951

To.
The Secretary to the Government of Bombay
Legal Department,
Secretariat, Fort,
Bombay.

Subject : V Sessions 1951.
Case No. 4
The State vs. Shankar Ladoo & another.

Sir,

I have the hobour to invite your attention to letter dated the 19th July 1951 addressed to Government by the Presidency Magistrate, V Court Dadar (copy enclosed) and to request you to forward me the sanction of Government for the prosecution of the two accused for offences under sections 376 and 109 committed by them outside the jurisdiction of the City Sessions Court for Greater Bombay as provided by section 178 of the Criminal Procedure Code

Yours faithfully

Sd/-

Public Prosecutor for Bombay

Mjr/5/5/

4 Copies

Tel. No 23291

9

No. 73 of 1951
Office of the
Public Prosecutor for Bombay
Fort Chambers, Dean Lane,
Bombay Dated 10th Septembe 1951

Dear Mr. Sarela,

With reference to your D.O. No. 14326 of the 7th instant enclosing record of proceedings in case No 11292/P of 1951 (State vs. ~~xxxxx~~ Shankar Ladoo and another the committal order on the charge of rape is exfacie without jurisdiction. Section 178 of the Criminal Procedure Code can have no application as it applies to cases committed for trial to another Court when the local Government may so direct. Likewise section 526 is inapplicable as it deals with the transfer of a case by oder of the High Court under specified Conditions.

The

Mjr/5/5/

4 Copies.

2. The best way out of the present difficulty is to invoke the provision of section 215 of the Crimi al Procdure Code by an application in revision to the High Court and obtain an order quashing the committal order in so far as the charge of rape is concerned.

3. Alternatively I would suggest a speedier method and it is that the Advocate General be instructed to appear at the Sessions trial of the case as committed and withdraw charges Nos. 5 and 6 under section 333 Criminal Procedure Code.

Yours Sincerely

Sd/-

To.

Abkar S. Sarela, Esqr. M.A.LL.B.,
Deputy Secretary to the Government of Bombay, Legal Department
Secretariat, Bombay

Mjr/5/5/

4 Copies.

committed for trial in any district may be tried in any sessions Division, but it has to be read along with section 177 and if so read it means that the committal must initially have been to the proper court. Here the committal was to a wrong court and that committal cannot be confirmed by a direction under section 178.

4. There are then three courses open. One is that the Sessions Court in Bombay may discharge the accused in respect of the offence of rape as was done in Emp. Vs. Mohanlal (Supra) so that they may be proceeded against in a proper court. Another is that the trial in the Bombay Sessions Court may be allowed to proceed on the footing that the irregularity will be cured under section 531 of the Criminal Pro. Code. Such an irregularity would be cured if there is no failure of justice by reason of the irregularity. But if the trial ends in conviction the accused may in appeal urge that the trial in a wrong sessions Division has occasioned a failure of justice. Whether that plea will succeed would depend upon the facts of the case. The third is to apply to the High Court under section 526 either to transfer the case of rape to the Thana Sessions Court for trial, or to direct that the trial shall proceed in the Court of Sessions at Bombay. Either of these orders, as may be fit, can be made by the High Court under section 526 (See Queen Empress vs. Thaku 8 Bom. 312 and Queen Empress vs. Atmaram Govind 2 Bom. L.R. 394).

5- The proper course to adopt would be to apply to the High Court under section 526 Cr. Pro. Code. The P.P. Bombay may be asked to consider the advisability of that course and inform this Department.

Mjr/7/65

4 Copies

NOTE

The question for consideration is whether a sanction or direction by the government under seti n 178 of the Criminal Procedure Code shall issue in respect of the committal of two accused to the Sessions Court at Bombay.

2. The two accused were charged with the offences of kidnapping of two girls Shanta and Champa and of rape on one of these girls namely Shanta. The kidnapping and its abetment took place at Bombay and the rape and its abetment at Kalyan. The charges against the accused were.

Accused No. 1.	(1) Kidnapping of Shanta (2) Abetting accused No. 2 in Kidnapping of Champa (3) rape on Shanta.
Accused No.2	(1) Kidnapping of Champa; (2) Abetting accused No. 1 in Kidnapping of Shanta, (3) Abetting accused No. 1 in rape of Shanta.

All the offences were inquired into by the Presidency Magistrate, 5th Court, Dadar and he committed the accused to the Sessions Court, Greater Bombay, at Bombay to stand their trial in resepct of the said offences. He has moved Government to Accord sanction under section 178 of the Cr. Pro. Code for trial of the accused in respect of the offence of rape (3rd charge in each case) at the Sessions Court at Bombay.

3. On the facts, section 178 Cr. Pro. Code will not apply to the case relating to the offence of rape. The charges are that the offence of rape and the abetment of that offence were both committed at Kalyan. Therefore the Presidency Magistrate, Bombay, could not inquire into it nor could the Session Court, Bombay try it in view of section 177 Criminal Procedure Code. (See Enperor vs. Mohanlal Aditram, 30 Bom. L.R.1253). The courts having jurisdiction to inquire into and try the case of rape are the courts of the First Class Magistrate, Kalyan and the Court of Sessions at Thana respectively. Section 178, no doubt, permits the Government to direct that any case

The question for consideration in these papers is whether a sanction or direction by Government under section 178 of the Criminal Procedure Code should issue/ in respect of the committal of the two accused to the Sessions Court at Bombay as requested by the Presidency Magistrate, 5the Court Dadar, Bombay

2. On the facts of the case, section 178, Criminal Procedure Code, will not apply to the case relating to the offence of rape. The charges are that the offence of rape and the abetment of that offence were both committed at Kalyan. Therefore the Presidency Magistrate, Bombay, could not inquire into it nor could the Sessions Court, Bombay try it in view of section 177, Criminal Procedure Code. (See Emperro vs. Mohanlal Aditram, 30 Bom. L.R, 1253) The courts having jurisdiction to inquire into and try the case of rape are the courts of the First Class Magistrate, Kalyan and the Court of Sessions at Thana/respectively. Section 178, no doubt, permits the Government to direct that any case committed for trial in any district may be tried in any Session Division, but it has to be read along with section 177 and if so read it means that the committal must initially have been to the proper court. Here the committal was to a wrong court and that committal cannot be confirmed by a direction under section 178.

3. There are several courses open in this case. One is that the Sessions Court in Bombay may discharge the accused in respect of the offence of rape as was done in Emperor vs. Mohanlal so that they may be proceeded against in a proper court. Another is that the trial in the Bombay Sessions Court may be allowed to proceed on the

footing that the irregularity will be cured under under section 531 of the Criminal Procedure Code. The third course is to apply to the High Court under section 526 either to transfer the case of rape to the Thana Sessions Court for trial, or to direct that the trial shall proceed in the court of Sessions at Bombay. As there were several courses open, the Public Prosecutor, Bombay, was consulted about the best possible course in this matter. A copy of his reply is enclosed. He considers that section 526 has no application to this case but his reasons for this view are not clear. He has suggested two other alternative courses viz. a revision application under section 215 of the Criminal Procedure Code for quashing the commitment on the charges Nos. 5 and 6 and withdrawal of charges Nos. 5 and 6 by the Advocate General under section 333 of the Criminal Procedure Code. An applicant under section 526 would be far more preferable than any of the courses suggested by the Public Prosecutor. However, as he will be in charge of the case, he may be allowed the liberty of adopting the course deemed best by him

Sd/-
Additional Secretary to Government

U.O. to H.D.No.14604, dated the 14th September 1951

Mjr/7/5

4 Copies

Legal Department.

The draft Government Resolution relating to sanction under section 297, Criminal Procedure Code, for the prosecution of Shri Kundlik Bapu Thombal.for an offence under section 211, I.P.C., has been slightly corrected (by the omission of reference to the letter of the Collector of Ahmednagar vide Circular No 14846, dated the 21st December 1949 of the office of the Remembrancer of Legal Affairs) and is now in order

The compliant against Shri Thombal will have to be filed by the Court which granted the final 'B' summary as required by section 195(1)(b) of the Criminal Procedure Code (see J.D. Boywala vs. Sorab Rustomji A.I.R. 1941 Bom. 294 and Baveji Appaji vs. Emp I.L.R. 195 Bom.1056). There is no doubt a later decision of the Bombay High Court in Revision Application No 568 of 1949 In re Shridhar Dattatraya Detang in which it is held that the complaint has not to be by the Court but this decision not having been reported, the earlier reported decision laying down that the complaint should be by the Court must be followed.

Sd/-

Additional Secretary to Government.

U.R. to R.D., No. 14579, dated the 14th September 1951.

Mjr.
7/5/ 4 Copies.

The question for consideration is whether order issued under section 144 of the Criminal Procedure Code, 1898, by the Sub-Divisional First Class Magistrate, Rajpipla, on 30th July 1951 against (1) Shri Thakorlal G. Shah and (2) Shri Natubhai Shah prohibiting them from entering a certain area for a period of two months, is a valid order.

2. For an order to be a valid order under section 144 of the Criminal Procedure Code, it is necessary among other things that it should state "the material facts of the case" and that the act which a particular person is directed to abstain from should be "a certain act".

3. The material facts of the case must obviously be the facts of the case material to the order passed. Here the order passed is to prohibit the entry of the two persons for a period of two months within the limits of Valia Mahal and Jhagadia Taluka of Rajpipla sub-division. The facts material to this must be stated. All that is anywhere stated, however, is that relations between the landlord and the tenants in Valia Mahal and Jhangadia Taluka of Rajpipla sub-division are strained due to the frequent meetings held in the said area by the said persons. It should have made clear in this case that at the meetings held cultivators were incited to cause a breach of public peace and tranquility. It is likely that a court would hold that this does not satisfy the requirements of the "material facts of the case". (See in re Ardeshir Phiroshah Murabun, A.I.R. 1940 Bom. 42).

4. By the words "a certain Act" in section 144 of the Criminal Procedure Code, is meant a definite act. (See Abayeswari Debi v. Sidheswari Debi, I.L.R. 16. Cal. 80 and Gulam Mahamed vs. Bhuban Mohan Moitra, Calcutta Weekly Notes Vol.XX II.p. 422). Here the act which the two persons are directed to abstain from is their entering the limits of Valia

Mahal and Jhagadia Taluka of Rajpipla Sub-Division e/x except upon a written permission from the Sub-Divisional First Class Magistrate, Rajpipal Sub-division. This prohibition embraces not merely the entry into those limits but also a series of activities even innocent and peaceful defendant on that entry. On this ground also the order made is defective.

5. The order in question may, if challenged in a court of law, be held not be a valid order under section 144 of the Criminal Procedure Code.

Sd/-
J.H. Dhurandher.
11/10

Remembrancer of Legal Affairs.

U.R. to H.D. (Spl.) No. 16212, dated the 13th October 1951.

Mjr/7/5
4 Copies

L.D. R.I. 624-A Confl
4-10-51

The view of the L.& H.Deptt. that sanction of the Govt. is necessary for prosecution in this case in respect of the offence of Criminal Conspiracy to obtain and receive pugree is correct.

A revised draft sanction is appended.

Sd/- 6/10/51

Deptt-Secy.

Sd/- 6/10

U.R. to D. & H.D. No. 855 Confl dt 10 October 1951

Mjr/9/6
4 Copies.

Shri Basangouda Mammallappa Patil appears to have committed criminal breach of trust in respect of three sums of money paid to him as tagai dues on three different dates within the course of one year. He also appears to have committed the offence of falsification of accounts in respect of one of these three sums.

Having regard to the provisions of sections 233, 234 and 235 of the Criminal Procedure Code, he cannot be tried at one trial in respect of all these four offences (see Jogendra vs. P.D. of Government of India 46 Cal. W.N.26, and Emperor vs. Shufauddin Ahmad 44 All. 540).

Two courses are open. One is to file one case in respect of all the three offences of criminal breach of trust, they having taken place within the course of one year, and a separate case for the offence of falsification of accounts. The other is to file one case in respect of the first item of criminal breach of trust and the item of falsification of accounts which is connected with it and another case for criminal breach of trust in respect of the other two items.

It is desirable to follow the former course namely one case for the three items of criminal breach of trust and another case for the falsification of account.

For a prosecution for falsification of accounts (Section 477A I.P.C.) sanction under section 197(1) would be necessary No such sanction is necessary for a prosecution for the offence of criminal breach of trust but such sanction may issue by way of abundant ceution.

Two draft sanctions are accordingly forwarded.

Sd/-

Additional Secretary to Government.

U.R. to R.D. No. 16606 , dated the 19th October 1951

HJr/7/5

4 Copies

Shri Basangouda Mummallappa Patil
Officiating Revenue Patil of
Kumatgi, Taluka Bijapur, District
Bijapur.

GOVERNMENT OF BOMBAY
Revenue Department.
Resolution No.
Bombay Castle, October 1951

RESOLUTION.- Whereas during the years 1949 and 1950 Shri Basangouda Mamallappa Patil held the post of Revenue Patil of Kumatgi, Taluka Bijapur, District Bijapur, and as such was public servant not removable from his office save by or with the sanction of The Government Bomby;

And whereas the said Basangouda Mamallappa Patil while acting or purporting to act in discharge of his official duties as Revenue Patil of Kumatgi, Taluka Bijapur, willfully and with intent to defraud fabricated the togai receipt book in respect of receipt No. 143 by issuing a duplicate receipt of Rs. 92-15-0 but showing on the original a credit for Rs.50/- only, any by entering in the duplicate and the original Khata No. 53 although the payment of Rs.92-15-0 was made in Khatas Nos. 17 and 34 and by dating the duplicate as 24-7-49 but the original as 19-9-49;

And whereas it appears to the Government of Bombay that the said Basangouda Mamallappa Patil has thereby committed an offence punishable under section 477A of the India Penal Code (Act XLV of 1860);

Now, therefore, in exercise of the Code of Criminal ~~Procedure, 1898~~ by sub-section(1) of section 197 of the Code of Criminal Procedure, 1898(V of 1898) the Government of Bombay is pleased to grant sanction for the prosecution of the said Basangouda Mamallappa Patil for the said offence.

By order of the Governor of Bombay,

Under Secretary to Government

To,
The Collector of Bijapur, (with case papers).
The Remembrancer of Legal Affairs.

Mjr/7/5
4 Copies

Prosecution
Shri Basangouda Mamallappa Patil
officiating Revenue Patil of
Kumatgi, Taluka Bijapur,
District Bijapur.

GOVERNMENT OF BOMBAY.
Revenue Department.
Resolution No. 142015

Bombay Castle, October, 1951

RESOLUTION.- Whereas during the years 1949 and 1950 Shri Basangouda Mamallappa Patil held the post of Revenue Patil of Kumatgi, Taluka Bijapur, District Bijapur, and as such was public servant not removable from his office save by or with the sanction of the Government of Bombay;

And whereas the said Basangouda Mamallappa Patil while acting or purporting to act in discharge of his official duties as Revenue Patil of Kumatgi, Taluka Bijapur, dishonestly misappropriated,

(a) Rs. 47-0-0 from the amount of Rs.92-15-0 paid to him towards tagai dues by Rekhu Deva Lamani on or about 24-7-1949 under receipt No. 143;

(b) Rs. 2-0-0 from the amount of Rs. 32-12-0 paid to him by Hatu Fadamu Lamani towards tagai due on or about 29-4-49 under receipt No. 16;

(c) Rs. 15-0-0 from the amount of Rs.30-5-0 paid to him by Hatu Fadamu Lamani towards tagai dues, Rs. 15/- having been paid on or about 16-4-50 as per Kachha receipt and Rs.15-4-0 being paid on or about 17-5-50 as per receipt No. 15.

And whereas it appears to the Government of Bombay that the said Basangouda Mamallappa Patil has thereby committed offence puhishable under section 409 of the Indian Penal Code (Act XLV of 1860)

Now, therefore, ...

Rjr/7/5
4 Copies

Now, therefore, in exercise of the powers conferred by sub-section (1, of section 197 of the Code of Criminal Procedure, 1898 (V of 1898, the Government of Bombay is pleased to grant sanction for the prosecution of the said Hanmangouda Mallappa Patil for the said offence.

By order of the Governor of Bombay,

Under Secretary to Government.

To

The Collector of Bijapur, (with case papers.
The Remembrancer of Legal Affairs.

Legal Department.

If Shri Tirakpadi is no longer holding office of President of the Mahalingpur Municipality, no sanction under section 197 of the Criminal Procedure Code, 1898, for his prosecution will be necessary (see Emperor v. P.S. Joshi, 50 Bom L.R. 160)

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D, No. 886-Confl., dated the 23rd October 1951

Mjr/7/5/

4 Copies

Legal Department.

Two separate sanctions will be necessary in this case. The two draft sanctions are in order.

It is presumed that the Magistrate has not yet taken congnisance of the offence. Under section 197 Criminal Procedure Code, the sanction must be previous to the taking of cognizance. In view of the fresh sanctions it would be necessary and desirable for the Magistrate to commence proceedings afresh (See Emperor Vs. Bhimaji Venkaji I.L.R. 42 Bom. 172 and Desaibhai Khushalbhai Vs. Emperor, A.I.R. 1939 Bom. 50).

Sd/-
[illegible]
Additional Secretary to Government

U.R. to R.D., No 16783 , dated the 22nd October 1951

Mjr/7/5
4 Copies.

OFFICE OF THE R.L.R.

Article XV of the Government referred to in the note of the P. & S.D. dated 10-10-1951 reads as follows:-

"Article XV.

The Government of Kathiwar shall, in consultation with the Government of India and the Government of Bombay, take all steps necessary to set up a joint Advisory Council, consisting of Ministers of Kathiawar and Ministers of the Province of Bombay, for investigating and discussing subjects of common concern and making recommendations thereon, and in particular recommendations for the better co-ordination of policy and action with respect to any such subject."

Under this article the Joint Advisory Council of the Ministers of Saurashtra and the State of Bombay is formed for investigating, discussing and making recommendations on "subjects of common concern". The question whether the Union Government should or should not on certain facts give sanction under section 197A, Criminal Procedure Code for prosecution of the Ruler of Patdi for an offence under the Cotton Ginning and Pressing Factories Act, 1925, committed at Viramgam in the State of Bombay, cannot be said to be such a subject of common concern as is covered by article XV.

Sd/- J.R. Dhurandhar
Remembrancer of Legal Affairs.

U.R. to H.D. No. 16785, dated the 22nd October 1951

Mjr/7/5
4 Copies

The accused Hotiram Balu Uchagaonkar was charged with the murder of a girl named Sakhu. He was convicted by the Additional Sessions Judge of Kolhapur on his own plea of guilty and sentenced to transportation for life. He appealed to the High Court from jail praying only for reduction of the Sentence. The High Court found that the conviction under section 302, Indian Penal Code was correct and therefore confirmed it but it felt that the circumstances of the case did not justify the sentence of transportation but called for a lesser punishment. However in view of section 302, the High Court could not reduce the sentence. It therefore dismissed the appeal, at the same time recommending to the Government the case of the accused and suggested that the sentence be reduced to one of five years rigorous imprisonment.

The R.L.A. is requested to advise whether there is a case for revision of sentence and if so whether it would be proper to regise the sentence at this stage or two wait and watch the conduct of the prisoner.

The case appears to be a fit one for reduction of the sentence. The High Court in recommending the reduction has taken into account all the relevant circumstances. There was no motive for the crime. The killing of the girl was with her consent and at her instance. It was more or less in pursuance of a death pact between the two whereby they agreed to end their lives in order to purify themselves. The accused tried to put an end to his life also in pursuance of the death pact. There was no concealment of the crime, no attempt to escape, no equivocation. The accused according to the evidence had a good moral character. In the circumstances reduction would be justified and if reduction is justified it can in law be given at any time. As the case for reduction is based on the circumstances surrounding the crime, it need not be made .....

dependant on the behaviour of prisoner in jail while undergoing the sentence.

Sd.

Additional Secy. to Govt.

U.R: to H.D. No. 17795, dt 9th Nov. '51.

The view of Secretary, Home Department, that the Government cannot entertain the application of the Additional District Superintendent of Police dated the 30th April 1951 in appeal and that it is open to the police to make out a fresh case is correct. The fresh case will have to be under the provisions of the Bombay Police Act, 1951.

Sd/-
Additional Secretary to Government.

U.R. to H.D. No. 17921 dated the 12th November 1951

Mjr/7/5
4 Copies.

The question for consideration is whether the State Government can release on parole a naval prisoner sentenced by a court martial under the Naval Discipline Act by exercising powers under section 401 of the Criminal Procedure Code, 1898.

2. The answer is in the negative. The powers under section 401, Criminal Procedure Code, are to be exercised by the Appropriate Government as defined in sub-section (3) of section 402, and in the case of a naval prisoner it is the Central Government alone which will be competent to suspend the sentence of the prisoner.

Sd/-
O.S. 1/11
Additional Secretary to Government

U.R. to H.D. No. 17271, dated 1st November 1951

Mjr/7-5
4 Copies.

No. 5584/49-E

Revenue Department,
Secretariate, Bombay (No. 1.)
13th November 1951

Subject :- Prosecution
Shri Khushalbhai Parbhubhai
------ of , Under section 467/471 Indian Penal Code

Memorandum.

The undersigned presents compliments to the Collector of Surat and with reference to the correspondance resting with his letter, No. EST/D.G. Tamboli, dated 3rd March 1951 on the subject mentioned above, is directed to convey the sanction of Government to the Prosecution of Shri Khushalbhai Parbhubhai for an offence falling under Section 467/471 Indian Penal Code for having fabricated a false document with the object of falsely implicating Shri D.G. Tamboli, Mamlatdar in the Nofthern Division

2. The papers of the case are returned herewith.

By order of the Governor of Bombay,

Sd/-
P.N.Ambegaokar
For (,D.S. BAKHLE),
Secretary to the Government of Bombay,
Revenue Department.

Accompaniments:- Papers of the case.

Copies to -

the Political and Services Department,
The Legal Department.

L.D.

Submitted with 4 pps for information
2. Fill in O.Cr. P.C./51
Id/-
6/11
D.S. ( )

Sd/-
16/11

Mjr/7-5-
4 Copies

orfeiture of bond and attachment of rent

Criminal Procedure Code, 1898 Sec. 514(2)

A ppisoner Shri Gianchand Mangalram was released on parole by the Government under section 401, Criminal Procedure Code, on his furnishing security for surrender ing himself on the expiration of the period of suspension. One Manohar Mohan Pardeshi stood surety; the amount of the bond being Rs.5000/-. The period of the parole was 15 days with effect from 10-12-1950. This period was later extended by Covern=ent for another 15 days without reference to the surety or without a fresh surety bond. The prisoner did not surrender at the end of this extended period but absconded and is not to be found. The order of release was therefore cancelled by the Government and the surety bond directed to be forfeited. The City Magistrate, First Class, Poona, then issued a warrant under section 514(2) Criminal Procedure Code, 1898, against the movables of the surety but no such prperty worth/ attaching was found. The surety has a share in a joint family house at Poona and the Magistrate has ordered with the consent of the surety that the whole rent of the house, amounting to Rs.133/- p.m., be recovered by the police every month from the tenants towards the amount of the penalty payable by the surety by reason of the forfeiture of the bond.

The question for consideration of the Remembrancer of Legal Affairs, is whether these orders of the Magistrate are legal; if not what is the method for recovery of the amount from the surety.

This bond not being a bond taken under the Criminal Procedure Code, nor being one for appearance before the Court of the City Magistrate, Poona, it is doubtful whether the said City Magistrate has jurisdiction to take action on this bond under section 514 of the Criminal Procedure Code. (See In re Crawford 42 Bom.400) But on the assumption that the City.

Magistrate has jurisdiction, the enfortment of the bond against Shri Pardeshi is open to challenge on the ground that he, the surety, is released from liability by the extension of the period of parole without his consent. But even in the absence of such a contention, the order made by the Magistrate for recovery of the rent every month from the tenants is not legal because the rent which is to fall due and become payable every month and in which the surety as a member of a joint family has only an unscertained share cannot be said to be moveable property.

Sd/-

C.C. Additional Secretary to Government.

D. No. 17637 dated the 7th November 1951

4 Copies

Legal Department

Grant of furlough

Criminal Procedure Code, 1898 Section 401 and Army Act, 1950 Section 179

A prisoner named Abdul Khader Dawood Khan who has been convicted by the General Court Martial under the Indian Army Act has requested his release on furlough. The Home Department considers that in view of the provisions of section 179 of the Army Act of 1950, Government of India would have to be moved to grant furlough to the prisoner. However the papers are referred to R.L.A. with a request to confirm the view and also to state whether, if furlough is to be refused, a reference to Government of India is necessary.

As the prisoner has been sentenced under the Army Act, it would not be competent to the State Government to suspend his sentence under section 401 of the Criminal Procedure Code and consequently furlough which requires suspension of sentence cannot be granted. The power of suspension of sentence in this case in view of section 402(3) can be exercised by the Central Government alone under section 401 of the Criminal Procedure Code (vide Additional Secretary's opinion No 17271dated 1-10-51) or by the authorities mentioned in section 179 of the Army Act, 1950. Further as furlough cannot be granted without suspension of sentence, which the State Government is not competent to do, the question of refusing it without a reference to Government of India does not arise.

Sd/-
O.C.
Additional Secretary to Government.

U.R. to H.D., No 18265 dated the 16th November 1951

Mjr/7/5

4 Copies

L.D.R.T. No. 22669 dt/2-11-51

Submitted.

Shri D.B. Adhav had executed a security bond under sec. 475 Cri. Pro. Code, 1898 for release of his sister who was detained under sec. 471 of the Cr. P.C. in the N.M. Mental Hospital, Thana. A copy of the bond is at p. 3. ante. According to the conditions of the bond Shri Adhav had deposited a sum of Rs. 50/- with the Supdt. of the Hospital ~~and~~ and had bound himself to produce his sister beofre the Supdt. once in every six months from the date of her discherge from the Hospital for a period of one year. Shri Adhav failed to produce the insane person as per conditons of the bond and it is, therefore, proposed to forfeit his deposit. There is no condition in the bond that the deposit will be forfeited for breach of the conditions and H.D. is, therefore, doubtful whether the same can be forfeited. R.L.A. is, therefore, requested to adgise.

2. The security taken by Govt. in the present case was in pursuance of the statutory provisions contained in S. 475 of the Cr. P.C. It is true that the bond did not contain an express provision that the deposit was to be that it was an implied term of the bond which must be well within the knowledge of Shri Adhav. Consequently, there does not appear any objection to Govt's. forfeiting the deposit for Shri Adhav's failure to comply with the terms of the bond (vide exception to S. 74 of the Indian Contract Act.)

Sd/- 16/11

D.S. ( )

Would a show cause notice to Shri Adhav be necessary. He may have an explanation to offer, e.g. the insane man may be dead.

Sd/- 10/11/51

Mjr/7-5-

4 Copies

The security taken by Government in the present case was in pursuance of the statutory provisions contained in Section 475 of the Criminal Procedure Code. It is true that the bond did not contain an express provision that the deposit was to be forfeited if the conditions were broken; but it is obvious that it was an implied term of the bond which must be well within the knowledge of Shri Adhav. Consequently, there does not appear any objection to Government's forfeiting the deposit for Shri Adhav's failure to comply with the terms of the bond (vide Exception to section 74 of the Indian Contract Act). However, as a matter of natural justice a show cause notice should be issued to the party before the amount is forfeited.

Sd/-

O.O. Additional Secretary to Government

U.H. to H.D. No. 18441 dated, 19th November 1951

Mjr/7/5
4 Copies

It appears that the Thakore of Tharad was accused of certain offences and on a reference to the Government of India they held that the immunity from criminal processes which the ruling princes were enjoying before the 15th August 1949 might not be available to them thereafter and informed the Bombay Government they had no objection to the prosecution of the Thakore of Tharad for substantive offences under the law. Accordingly, the Thakore of Tharad was prosecuted in six cases. In five cases he has been discharged by the Resident First Class Magistrate and in the remaining one case of dacoity he has been committed to the Sessions Court, and the case was fixed for hearing on 19th March 1951 and it appears to have been postponed. In the meantime, the Criminal Procedure Code has been amended by the Code of Criminal Procedure (Amendment) Act, 1951, whereby a new section 197A has been inserted. Sub-section (2) of that section provides:

> "No Court shall take cognizance of any offence alleged to have been committed by the Ruler of a former Indian State except with the previous sanction of the Central Government."

Sub-section (3) provides that the provisions of sub-section (2) of section 197 shall apply in relation to the prosecution and trial of the Ruler of a former Indian State as they apply in relation to the prosecution and trial of a Judge. In view of these provisions the Political and Services Department considers that it would be necessary to have formal sanction of the Central Government under the new section 197A, particularly when the previous sanction given by the Government of India was not a statutory sanction. The R.L.A. is requested to advise.

2. There is no provision in the Code of Criminal Procedure (Amendment) Act, 1951, indicating either directly or indirectly, that the new section 197A inserted in the Criminal Procedure Code is prospective or retrospecrive, section 197A which gives the Rules of Indian States a

Mjr/7/5
4 Copies

right, namely, immunity from prosecution save with the sanction of the Central Government, must be construed prospectively. This view is reinforced by the fact that unlike the provision in section 270(2) of the Government of India Act, 1935, there is no provision in the Code of Criminal Procedure (Amendment) Act, 1951, providing for the dismissal of pending proceedings on the ground ~~for the dismissal of pending proceedings on the ground~~ of want of sanction. The pending proceedings against the Ruler of Tharad will therefore be not bad

Sd/-

O.C.
Additional Secretary to Government.

U.R..to P. & S.D. No 7690 dated 15th May 1951

Mjr/7/5

Copies

There is no legal objection to the production in the Court, in the Dacoity case against the Thakore of Tharad, Government of Bombay letter No.2751/46/10872-G dated the 12th April 1950, addressed to the Collector of Banaskantha; but it does not appear that any useful purpose will be served by the product of that letter. It is neigher clear from the papers nor has it been stated by the Government Pleader and Public Prosecutor, Banaskantha, why he wants to produce that letter in the Court in that case. If the objection is to prove sanction of the Central Government as contemplated by section 197-A of the Criminal Procedure Code, the letter in question will not serve that purpose. Further this Department has already opined that section 197-A has no retrospective effect and as such no sanction for this particular case is necessary

Sd/-

O.C.
Additional Secretary to Government

U.R. to P. & S.D. No. 633-Confls- dated the ~~2nd~~ 2nd July 1951

Mjr/7/5
4 Copies.

Office of the R.L.A.

There is no legal objection to directing the District Magistrate, Poona as at A of page 93

Sd/-
J.R. Dhurandhar
8/12

Remembrancer of Legal Affairs.

U.R. to H.D. No. 19735 dated 8th December 1951

Mjr/7/5
4 copies

Legal Department.

Seen and returned.

Prosecution for cheating under section 417 of the Indian Penal Code would be competent provided it can be proved that the sale by the Ramesh Provision Stores of adulterated ghee was doen by misrepresenting that it was pure ghee which is a question of fact. However, the offence of cheating is a non-congizable one, and the courts will take conizance of it only on the complaint of the person so cheated.

Sd/-

Additional Secretary to Government

U.R. to L.S.G. & P.H.D. No. 7334, dated the 9th May '51

Mjr/7/5

4 Copies.

There are only two methods of having objectionable remarks in a judgement expunged. One is to approach the trial Court itself with an application for that purpose; the other is to approach the High Court with such an application. The first method has not been expressly provided for by any provisions of the Criminal Procedure Code, but the inherent powers of a Court to expunge objectionable remarks are recognized in a decision of the Punjab Chief Court in re Malik Umar Hayat Khan (11. Cri.Law Journal.p.178), which decision goes to show that the expunging of its own remarks by the Court itself does not amount to alteration of judgment, which is prohibited under section 369 of the Criminal Procedure Code. The second method is ~~recored~~ covered by section 561A of the Criminal Procedure Code which saves the inherent powers of the High Court. Section 561A. however, has been differently interpreted by different High Courts in the matter of expunging of objectionable remarks. Some of the High Courts have held that section 561A is wide enough to permit the High Court to expunge objectionable remarks from the judgments of lower courts on the application of any party whether or not the matter is before it on merits either in appeal or in revision. The Bombay High Court has, however, held in P.J.Rogers v. Shrinivas A.I.R.1940 Bom.266) that the High Court will not consider such a mere application for expunging the remarks unless the whole matter was before it on merits. The Bombay ruling has been followed by the Patna High Court in Bhutnath Khawas v Dasrath Das (A.I.R.194 Pat.544)-

2. Now of these two methods it appears that the first method is not free from doubt so far as a subordinate Court is concerned, because the ruling of the Punjab Chief Court referred to above is in regard to a case where the Chief Court itself on a motion to it removed the remarks from its own judgment. The provisions of section 561A of the Criminal Procedure Code show that the power to exercise

The inherent jurisdiction under the section has been given by the legislation to the High Court only and not to Subordinate Courts. Therefore, the more appropriate thing to do in the present case would be to adopt the second method namely, to approach the High Court. It is true that the present view of our High Court is not to act on a mere application unless the matter is before it on merits. But there are rulings of the other Courts to the contrary and it may be worthwhile to reopen that question of law before our High Court.

2. As the Home Department evidently feel that the remarks against the Police Sub-Inspector are uncalled for and unfair the appropriate course to adopt in the present case would be for the Home Department to ask the Sub-Inspector to make an application to the High Court under section 561A of the Criminal Procedure Code praying that the remarks made against him be expunged. He may be assisted by the Public Prosecutor, Sholapur, in preparing the application and by the Government Pleader, High Court, in presenting it to the High Court and in arguing the matter before the High Court.

Sd/-

Additional Secretary to Government

U.R. to H.D. 511-Confl dated 29th May 1951.

Mjr/7/5

4 Copies.

Legal Department
L.D.R.I.No.21687 dt.19-10-5

Submitted.

In an inquiry into certain allegations against Shri Y.D. Chavan, President of the Rajpur Municipality it was revealed that there was misappropriation of the Municipal funds in respect of four bills viz (1) a Bill for Rs. 153-6-6 signed by one fictitious person named J.G.Powar but passed for Rs.120/- ;(2) a Bill for Rs.88-5-0 passed by Shri M.G.Sawant; (3) a Bill for Rs. 97-1-6 produced in the name of one P.K.Gokhale and (4) a Bill for Rs.55/- passed by Shri Khadape. The first bill, which was in respect of typing work, was, it appears, prepared by the President himself and the amount of Rs.120/- sanctioned for the same was appropriated by him. Out of the second bill which was also for typing work, only Rs.58/- were paid to Shri Sawant and the rest of the amount was misappropriated by the President. The amount of the third bill, which was also for typing, appears to have been misappropriated by the President as the two persons who bear the name of P.K.Gokhale do not admit to have done any work for the Municipality or to have received the amount. The fourth bill was paid to Shri Khadape who is a relative of the President; but the work for which it was paid, viz. copying etc. of municipal bye-laws, appears to have been executed by the President himself and the Municipal Head Clerk. It is proposed to prosecute the President for these misappropriations etc under sections 409,467,418 and 468 of the Indian Penal Code; and the question that is referred to R.L.A. for advice is whether sanction of Government for prosecution is necessary in view of the fact that the President is not removable from office save by or with the sanction of Government.

2. The offences with which the President is to be charged are those of criminal breach of trust

Mjr/7/5
4 Copies.

(section 409), cheating (Section 418) and forgery (Section 467-468). So far as criminal breach of trust is concerned, it is well settled that no sanction is necessary for prosecution for this offence(In re K. Sanaya, 1941 F.L.J.177; In re. K.S. Doraiswamy, 50 Cr. L.J. 98; and R.L.A's opinion No.328-Confl dated the 30-5-1949). The Madras High Court has also held in the case of K. Sannaya, quoted above, that no sanction is necessary for prosecution under section 467. In the circumstances ~~necessary for prosecution under section 467~~ no prosecution would be necessary in the present case for prosecution under section 467 nor also under section 468. As regards the third charge of cheating (section 418), the offence cannot be said to have been committed in the discharge of duties and no sanction would appear necessary. In the circumstances no sanction would be necessary for any of the charges under which the President is to be prosecuted.

Sd/-
23/11

D.S. ( )

Sd/-
27-11-51

Addl. Secy

Sd/-
27-11-

Mjr/7/5
4 Copies.

Legal Department.

The offences with which the President is to be charged are those of criminal breach of trust (section 409), cheating (section 418) and forgery (sections 467 and 468). So far as criminal breach of trust is concerned, it is well settled that no sanction is necessary for prosecution for this offence (In re K. Sannaya, 1941 F.L.J. 177; In re. K.S. Doraiswamy, 50 Cr. L.J.98; R.L.A's opinion No.328-Confl. dated the 30-5-1949). The Madras High Court has also held in the case of K. Sannaya, quoted above, that no sanction is necessary for prosecution under section 467. In the circumstances no sanction would be necessary in the present case for prosecution under section 467 nor also under section 468. As regards the third charge of cheating (section 418), the offence cannot be said to have been committed in the discharge of duties and no sanction would appear necessary. In the circumstances no sanction wouldbe necessary for any of the charges under which the president is to be prosecuted.

Sd/-

O.C.

Additional Secretary to Government

U.R. to L.S.G. & P.H.D. No. 19068, dated
28th November 1951

Mjr/7/5
4 Copies.

R.I.No. 79-Confl.dated 1-12-51.

Submitted.

The facts of this case are stated in the Sub-Divisional Police Officer's endorsement dated 21-11-1951 p-11 ante. Briefly they are as follows:-

It appears that Shri Gokhale, Cashier of the Sangli Municipality, has misappropriated an amount of Rs.10.000/- with the connivance or help of the then President, Shri B.G.Naik and the Chief Officer, Shri Marathe. It is also suspected that Shri Lagu, the permanent Chief Officer of the Municipality was also in league with the culprits. It is, therefore, proposed to prosecute these persons under section 409 read with section 109 of the I.P.C. and the papers are submitted to Government for according sanction to the prosecution of the President and the Chief Officer under sec. 197 of the Cr. P.C.

2. It appears that Shri Naik is no longer a President of the Municipality and the L.S.G.&P.H.D. considers, upon the authority of R.L.A's advice in the Mahalingpur Municipal Case, that no sanction would be necessary. The R.L.A. is, however, requested to advise whether this view is correct.

3. If Shri Naik has ceased to be a President, the protection of section 197, Cr. P.C. would not be available to him and no sanction would be necessary. It is not clear from the appers whether the prosecution is to be launched for any offences other than the offence under section 409, I.P.C. If the prosecution is to be confined only to sec, 109, IP.C. , then no sanction at all would be necessary (cf. Addl. Secy's opinion No. 19068 dated the 26th November 1951).

Id/-
D.S. 11/12 (Cr.)

R.L.A. Sd/- 11/12/51

Sd/- 13/12

Mjr/7/5

Please put up R.L.A's opinion in the Mahalingpur Municipal can be referred to by the L.S.G. & P.H.D.

Sd/-
13-12

Resubmitted.

The Mahalingpur case, which was under submission, is put up below as directed.

Sd/-
13-12
R.L.A.

Mjr/7/5
4 Copies

Sanction under section 197, Cri. Pro. Code

If Shri Naik has ceased to be a President, the protection of section 197, Criminal Procedure Code, would not be available to him and no sanction would be necessary It is not clear from the papers whether the prosecution is to be launched for any offences other than the offences under section 409, I.P.C. If the prosecution is to be confined only to section 409, I.P.C., then no sanction at all would be necessary (cf. Addl. Secy's opinion No. 19068, dated the 28th November 1951).

Sd/-

J.R. Dhurandhar
14-12

O.C.
Remembrancer of Legal Affairs.

U.R. to L.D.C. & G.H.D., No. 1042-Confl dated the 14th Dec. 1951

Mjr/7/5
4 Copies.

R.I.No.786-Confl,dated 4-12-1951

Submitted.

Please see R.L.A's opinion No.10671, dated the 25 th July 1951 at pp.11-13 ante; Addl. Secy's opinion No 886-Confl., dated 23-10-1951 at p 43 ante and the L.S.G.&P.H.D. note at p 47 ante. The R.L.A. is requested to advise whether sanction would be necessary for prosecuting Shri Tirakpadi, although he has ceased to be a President, on the ground that he continues to be a councillor. R.L.A. is also requested to advise whether sanction would be necessary for prosecuting the then Chairman, Shri S.C. Murgad.

2. The protection of section 197, Cr. P.C. is available only to those public servants who are not removable from their office save by or with the sanction of the State Government or the Central Government. The protection is not available to other public servants who are removable by an authority lower than the State Government. Further, in order to be able to avail himself of the protection, the public servant should be holding the office referred to in section 197 of the Cr. P.C. at the time of the initiation of the proceedings. Calcutta It has accordingly been held by the High Courts of Calcutta, Allahabad and Bombay that if a public servant has ceased to be in office at the time when proceedings are initiated no sanction would be necessary (Emp.v.P.A. Joshi,50 Bom. L.R. 160. (1944) 1 Cal . 113 and (1938 All. 776 It is true that a municipal councillor or a Chairman is a public servant but under sec. 16 of the Bombay District Municipal Act, 1901, a councillor or a chairman who is not also a President or Vice-President, is removable from his office by the Director of Local Authorities. In the circumstances, these persons will not be entitled to claim protection of sec. 197 and President, who has ceased to be a President, would not also be entitled to the protection of the section on his ceasing to be a President.

Sd/- 11-12

NJr/7/5

Sanction under section 197, Cri. Pro. Code.

The protection of section 197, Criminal Procedure Code, is available only to those public servants who are not removable from their office save by or with the sanction of the State Government or the Central Government. The protection is not available to other public servants who are removable by an authority lower that the State Government. Further, in order to be able to avail himself of the protection, the public servant should be holding the office referred to in section 197 of the Criminal Procedure Code at the time of the initiation of the proceedings. It has accordingly been held by the High Courts of Calcutta, Allahabad and Bombay that if a public servant has ceased to be in office at the time when proceedings are initiated no sanction would be necessary (Emp.v.P.A.Joshi, 50 Bom. L.R. 160;(1944) 1 Cal. 113 and 1938) All 770.) It is true that a municipal councillor or a Chairman is a public servant but under section 16 of the Bomvay District Municipal Act, 1901, a councillor or a Chairman, who is not also a President or Vice-President, is removable from his office by the Director of Local Authorities. In the circumstances, these persons will not be entitled to claim protection of section 197 and a President, who has ceased to b e a President, would not also be entitled to the protection of the section on his ceasing to be a President.

Sd/-
J.R. Dhurandhar
Remembrancer of Legal Affairs.
14/12

U.R.,to L.S.G. & P.H.D., 1043-Confl dated the 15th December 1955

Mjr/8/5/
4 Copies

The Commissioner of Police, Bombay, proposes to file a criminal case against six persons for the offence of offering illegal gratification to a police officer (Shri Barot) to induce him to refrain from taking action against M.M. Baxabhai and Co. ~~xhx~~ who were suspected of selling in the balck market huge quantities of cloth intended to be exported, to Aden.

Out of the six accused arrested, accused No. 1, Ramlal Shah is the accountant of the firm of M.M. Baxabhai and Co., Accused No.2, Alia Hussein, is the manager of the firm; accused Nos. 3 to 6 are the Joint Receivers of the assets of the Firm, appointed by the High Court in a pending suit. The Joint Receivers used to carry on the affairs of the firm.

The prosecution alleges that when S.I. Barot was investigating the case, accused No.1, on behalf of the firm, offered to pay a bribe of Rs.1.25000/- to the Police Officer to induce him to refrain from taking any further action in connection with the shady transactions in which the firm was involved . A trap was arranged. AccusedNo.1. agreed to make the payment on a certain day. On 28th July 1950 some nine cheques were signed and issued by the joint Receivers for the total amount of Rs.2,33,514/ These were cashed, and out of that amount the sum of Rs.1.25,000/- was offered to Shri Barot. Accused No. 1. was arrested on the spot, and the other accused persons were arrested later .

Shri Pardiwala was appointed special Prosecutor in this case. He has expressed the opinion that accused No.6, Shri Ashgharalli N, Singaporewala, may not be named in the charge sheet as an accused person as there was little evidence against him. He could be more usefully examined as a witness in support of the prosecution case. The Police Commissioner does not,

not agree with the view.

On a/ perusal of the papers, and on a consideration of the circumstances of the case, it seems that the prosecution stands to gain little by dropping the case against accused No. 6, and examining him as a witness. Accused No. 6 has been a Joint Receiver of the assets of the firm from 1947. When he signed and issued the cheques for large amounts he must be presumed to have inquired for what purpose the money was to be used. His allegation that he believed that the money was to be distributed among the heirs of the original partners can hardly be believed.

As he was a Joint Receiver along with accused Nos. 4 and 5, it would be difficult for the prosecution to explain why he was not impleaded as an accused person along with his companions.

Accused No. 6 is a Barrister by profession, and he has urged that even if he is eventually acquitted, the fact that he was involved in the case was likely to affect him professionally. It is so, and it is regrettable. But this is hardly a relevant consideration in deciding what persons should be impleaded as accused persons. That point must be decided on the evidence available for the prosecution. It appears that accused No. 6 was also personally involved in a shady transaction, and one condition of the bargain of illegal gratification was that the Police should drop further inquiry into that transaction. This makes it probable that accused No. 6 knew for what purpose the money was being drawn by cheques.

It seems desirable therefore that the name of accused No. 6 should be included among the names of the accused to be mentioned in the charge sheet.

Sd/- J.N. Dhurandhar
Remembrancer of Legal Affairs. 16/5

U.O. to H.D. No. 7797, dated the 17th May 1951
Mjr/8/5
4 Copies.

Shri G.V. Bandekar, Sub-Inspector of Police under suspension, was alleged to have committed certain offence in conspiracy with other officers and to have been guilty of misconduct and neglect of duty when he was posted at Patoda in Managalgaon Division in Hyderabad (Decan preliminary inquiry into these allegations was held and on the report of the officer holding that inquiry a regular departmental inquiry was held by the D.I.G.P., S.R. who held certain charges against Shri Bandekar proved and reported that fact to the Bombay Government. The Government sent a copy of that report to Shri Bandekar and called upon him to show cause why he should not be dismissed from service. Shri Bandekar has then written to the Government to give him copies of certain documents to enable him to show cause. These documents are described in his letters dated 17-4-51 and 1-5-51 (pages 77 and 81 of this file). The H.D. has referred the matter through the P.&.S.D. for an opinion whether Shri Bandekar has a right to be furnished with these documents and whether it is incumbent on the Government to furnish them. The view of the H.D. and P.&.S.D. is that as the show cause notice is only in order to determine the quantum of punishment he has no right to be furnished with these documents.

2. It is true that the show cause notice is concerned with the quantum of punishment but in answer the defaulter is entitled to show that the punishment proposed could not or should not be imposed on him. He has a right to make a representation under Rule 545 (29) of the Bombay Police Mannual, 7th Edition, Volume I- The right to make a representation implies that he must have facilities to do so. That being so, he is entitled to rely on and for that purpose obtain copies of all those documents which form part of the evidence

in the departmental inquiry except documents of a confidential nature or office notes or reports or correspondence relating to the inquiry. The principle laid down in Rule 545(16) of the the Police Mannual may be adopted. If he has already received copies of any of these documents during the departmental inquiry against him, it is not incumbent on the Government to supply to him additional copies. As regards copies of rules of procedure for which he has asked, copies of only the relevant rules need be furnished to him or he may be referred to published books, if there be any in respect of those rules.

Sd/-

p.c.
Additional Secretary to Government

U.O. to H.D. No. 10209 dated the 27th June 1951

Mjr/8/5

4 C.

If the High Court has issued stay orders against the District Magistrate, East Khandesh, in terms of what is stated in paragraph 2 of the letter dated 28-8-51 from Messrs. Nagrani & Mohanlal, Advocates(at p.3), it would be proper and desirable for the Director of Rehabilitation also, he having been apprised of the stay orders, to stay his hands for about a fortnight or such other period as may be considered reasonable, in accordance with the spirit of the interim stay orders of the High Courts, and to inform Messrs. Nagrani & Mohanlal, that he has stayed his hands for that period to enable them to move the High Court and that if no orders of the High Court are during that period served upon him, he would proceed according to law.

Sd/-
C.C.
Additional Secretary to Government

U.R. to R.H.D. No 14289 dated 7th Sept. 1951

Mjr/8/5
4 C.

Submitted.

Please see the letter from the Commor. of Police and the R.D. notes thereunder.

On the letter received by this Deptt. it was been suggested that the H.D. may be requested to move the Ministry of Home Affairs, Govt of India for the issue of notification under section 504(3) of the Cr. P.C. and the papers have been sent to Poona for the H.L.A's approval of the suggestion. The appers have not come back from coma so far.

Id./
24/9/

D.S. (Cr. L.) Await ~~////~~ the orders of the Secrar Secretary on the papers already sent.

Sd/-

24/9/51

Resubmitted

The papers have come back from Poona and they are being refund No. to H.D.

The Secy, R.D. has seen the papers.

Mjr/8/5

4 Copies.

L.D. R.I.No. 19795
dt. 24-9-51

Legal Department

On other papers the Home Department has been requested to move the Ministry of Home Affairs, Government of India, to issue the requisite notification under Sec.504(3), Criminal Procedure Code.

Sd/-

o.c.

Deputy Secretary to Government

U.R. to R.D., No 15365, dated the 26th September 1951.

Mjr/8/5

4 Copies.